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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,396	01/10/2002	Angela M. Petroskey	AMP 0101 PUS	4654

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02/25/2004

EXAMINER
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ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 02/25/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/043,396	<b>Applicant(s)</b> PETROSKEY, ANGELA M.	
	<b>Examiner</b> Mitra Aryanpour	<b>Art Unit</b> 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.  
 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-18 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 8-12, 14, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner (5,564,122).

Regarding claim 1, Wagner discloses a training device comprising a front layer (12), a rear layer (10) and an insert portion (11) of relatively stiff material (it is made of hard plastic) disposed between the front and rear layer, and a hand-receiving portion (5) to allow receipt of a user's hand (see figure 6); said hand receiving portion (5) being smaller than the front layer and covering a substantial portion of the user's hand to maintain it in a generally fixed position; wherein said hand receiving portion is a glove (see column 2, lines 29-33). For purposes of examination, a glove is taken to encompass a fitted covering for the hand with a separate sheath for each finger and the thumb.

With respect to claim 2, statements of intended use are not accorded any weight when the structure is anticipated. See In re Schreiber, 44 USPQ 2<sup>nd</sup> 1429.

Regarding claim 3, Wagner shows the insert portion (11) to be made of plastic material (see column 2, lines 60 and 61).

Regarding claim 4, Wagner shows the front layer (12) and the rear layer (10) to be made of foam material (see column 2, lines 56-60).

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Regarding claim 5, Wagner shows the rear layer to be made of two layers of Styrofoam and the front layer to be a thin foam layer (see column 2, lines 56-60; and best seen in figure 6).

Regarding claims 8 and 9, Wagner shows a covering surrounding the front, rear and insert portion, wherein the covering is made of fabric material (see column 2, lines 61-63; also figure 6).

Regarding claim 10, Wagner shows the hand-receiving portion is a glove (see column 2, lines 29-31).

Regarding claim 11, see the comments for claims 1, 4, 5 and 10. The recitation of A volleyball blocking pad has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Regarding claim 12, see the comments for claim 4.

Regarding claim 14, see the comments for claim 5.

Regarding claim 17, see the comments for claim 10.

Regarding claim 18, see the comments for claims 11.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, 7, 13, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (5,564,122).

Regarding claim 6, Wagner shows the insert portion (11) is made of hard plastic. As it is well known in the plastic art, all plastics provide in combination some degree of flexibility and rigidity. The degree of flexibility and rigidity vary depending on the shore hardness value of the plastic.

Regarding claim 7, Wagner is silent as to the means for securing front, rear and insert together. Various means are well known in the relevant art. Absent a showing of new or unobvious results it would have been obvious to use any well known means including glue for securing the various layers of Wagner's training device, the motivation being so that the layers remain securely in place upon impact.

Regarding claim 13, see the comments for claim 6.

Regarding claim 15, see the comments for claims 2 and 6.

Regarding claim 16, Wagner does not expressly indicate that the covering (13) is removable, but shows the cover to be closed at the upper end by lacing (14; for purposes of examination lacing is interpreted as a means for releasably tying two edges together), and as best seen in figure 6, it appears that the cover is removable.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Taylor.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**MITRA ARYANPOUR**  
**PATENT EXAMINER**

MA  
17 November 2004